

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

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BOARD OF TRUSTEES, GLACIER)	
COUNTY SCHOOL DISTRICT NO. 9,)	
)	OSPI 276-98
Appellant,)	
)	
vs.)	
)	
ROBERT and YVONNE EMERSON, WALTER)	
and BRANDI EVITTS, DAVID and CHARLA)	
FLAMOND, RICHARD and DENISE)	
MATAISZ, SEAN and LYNNE MURDOCK,)	
AMY PANNONI, MITCHELL and ELAINE)	
PETERS, GORDON and LORUS PETERSON,)	
ROCKWELL and SHAUNA SMITH and)	
MICHAEL and DEBRA THRONSON,)	
)	
Respondents.)	
)	

* * * * *

PROCEDURAL ORDER

On December 7, 2000, the Board of Trustees of Glacier County School District No. 9 (hereinafter the Browning District), filed a motion to dismiss the underlying appeals to this proceeding based on mootness.

This matter began in 1998. The Respondents filed requests for out-of-district attendance. They wanted their children to attend school in Cardston, Alberta, Canada, for the 1998-1999 school year. In August, 1998, the Browning District approved the requests for students they considered mandatory (7th through 12th grade students living closer to Cardston than Browning) and denied the other requests.

The Respondents, parents of children living in the area, appealed the denial to the Acting Procedural Order.276

Page 1 of 4

Glacier County Superintendent. The County Superintendent issued a default judgment without a hearing and ruled that the out-of-district agreements were mandatory. The Browning District appealed the default judgment to the State Superintendent in November, 1998.

At that time, all parties agreed that a ruling on the default judgment would be of no help in resolving their dispute. The parties agreed that a declaratory ruling on the underlying question of law was appropriate. On June 4, 1999, this Superintendent issued a ruling that:

1. Under state law, a school district is only required to approve out-of-district attendance agreements for students that satisfy the mandatory criteria of § 20-5-321(1), MCA;
2. Under § 20-5-321(1)(c), MCA (1999), the siblings of mandatory high school students meet the mandatory criteria; and
3. The Babb Elementary School should be considered the nearest school for measuring the distance from school to home for 6th graders.

The Browning District appealed the portion of the ruling regarding siblings of high school students. Although it appealed that ruling, it approved sending sibling students as mandatory for the 1999-2000 school year.

In March, 2000, the District Court remanded stating that the issue to be decided was the underlying default judgment. The Court interpreted the June 4, 1999, order as "in favor of Respondent parents" and considered the Browning District's appeal as an appeal of all the rulings in the order. The Court held that a hearing was required on "the why of attendance" (emphasis original) and wrote:

The factual record needed to answer the query posed by the language of Section 20-5-321(1)(c) can only be developed by the county superintendent of schools and without such record neither the SOPI nor this Court can properly review the assumed determination for which review is sought.

Glacier County School District No. 9, Browning v. Emerson, Evitts, Flamond, Mataisz, Murdock, Pannoni, Peters, Peterson, Smith, Thronson, and Nancy Keenan, State Superintendent, Cause No. DV-99-73, Order Finding Error and Remanding for Further Proceedings, Ninth Judicial District Court, 3/30/00

The District has now filed a motion to dismiss the underlying appeals, stating it is not currently contesting the siblings of high school students issue. The District Court's remand would put back in dispute issues that the parties appear to have resolved. There is no longer a dispute that parents have a right to discretionary approval and there is no longer a dispute about Babb being the district of residence for 6th graders. The only ruling of the State Superintendent that the Browning District appealed was that siblings of high school students are mandatory.

It appears to this Superintendent that there is no current controversy to be resolved and remanding to the County Superintendent would serve no purpose. This Superintendent is, therefore, inclined to grant the Browning District's motion to dismiss. Prior to issuing such an order, however, the Respondents will have thirty days to object and bring to the State Superintendent's attention any issue related to the 1998-1999 school year that they want heard.

If an objection is received before January 18, 2000, an Order remanding this matter to the County Superintendent will be issued. If no objections are received, the Browning District's motion will be granted. A copy of this Order is being sent by mail to all parties at their last known addresses.

DATED this _____ day of December, 2000.

NANCY KEENAN

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this _____ day of December, 2000, a true and exact copy of the foregoing ORDER was mailed, postage prepaid, to the following

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